



**INCORPORATED COUNTY OF LOS ALAMOS
SERVICES AGREEMENT**

This **SERVICES AGREEMENT** ("Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Allied 360 Construction, LLC**, a New Mexico limited liability company ("Contractor"), to be effective for all purposes November 30, 2022 ("Effective Date").

WHEREAS, County issued Invitation for Bids No. 23-36 (the "IFB") on October 6, 2022 requesting bids for On-Call Snow Removal Services and Emergency Equipment Services; and

WHEREAS, Contractor timely responded to the IFB by submitting a bid dated October 27, 2022; and

WHEREAS, based on the evaluation factors set out in the IFB, Contractor was one of two (2) successful bidders for services listed in the IFB; and

WHEREAS, the County Council, as part of a multiple source award, approved this Agreement AGR23-36a and AGR23-36b at a public meeting held on November 29, 2022; and

WHEREAS, the aggregate compensation between this Agreement and Agreement AGR223-36b shall not exceed the sum of SIX HUNDRED THOUSAND DOLLARS (\$600,000.00), excluding New Mexico gross receipts taxes ("NMGRT"); and

WHEREAS, Contractor shall provide the Services, as described below, to County.

NOW, THEREFORE, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

SECTION A. SERVICES; WORK HOURS; CONTRACTOR'S GENERAL REQUIREMENTS; TASK ORDER PROCESS; ACTIVATION AND INVOICING PROCESS

1. **Contractor Services.** County, at its sole discretion, shall notify Contractor when Contractor's services are required. Following County's Traffic and Streets Manager, or their designee verbal authorization to perform services against the Task Order issued for that season, a confirming email shall be sent within twelve (12) hours of said authorization identifying the Task Order to be utilized for the call-out. Snow removal shall include, but not be limited to:
 - a) Clearing and removing snow from public sidewalks in front of building and shops including county buildings.
 - b) Clearing and removal of snow from all county facilities including but not limited to, county parking lots, county buildings, and county driving areas including all access points to county parking lots, county buildings, and county driving areas including entrances in front of all overhead doors at the aforementioned places.
 - c) Retuning to clear and remove snow from county parking lots where cars were parked during the prior snow clearing and removal.

- d) Returning to clear and remove snow from a county parking lot when most of the vehicles present during the prior snow clearing and removal are gone from the parking lot.
 - e) Assisting the County in its Snow Removal operations on county streets and facilities including but not limited to Camp May road, and the County Airport.
 - f) Respond and assist the County with non-snow related emergency operations which may occur at any time 365 days per year, twenty-four (24) hours per day. For purposes of understanding, such emergency services may include, but not be limited to, flood or other disaster response and clean-up.
2. **Work Hours:** When notified by County to perform Contractor Services identified herein, Standard work hours shall be from 5:00 a.m. to 8:00 p.m., Monday through Friday, and Premium work hours are from 8:00 p.m. to 5:00 a.m., Monday through Friday, and for all times on Saturday and Sunday and holidays.
3. **Contractor General Requirements:**
- a) Contractor shall supply all equipment (including fuel, maintenance and materials required to keep equipment in operation) and labor to clear debris, snow, or provide other emergency services utilizing end loaders, backhoes, skid steers, dump and semi-dump trucks, snow blowers, graders, dozers and shoveling as required to complete the work in an expeditious manner. All equipment supplied shall be maintained by Contractor in good working order. County shall pay for operated equipment hours, unless otherwise authorized in advance by the Traffic and Streets Manager or designee.
 - b) Snow or debris shall be dumped in locations determined by the Traffic and Streets Manager or designee.
 - c) Damage caused to pavement, sidewalks, curbs, or other County infrastructure by the Contractor shall be repaired at Contractor's expense on a day and time determined by the Traffic and Streets Manager or their designee.
 - d) Contractor or the Contractor's designated supervisor of the Contractor Services shall maintain the ability to stay in constant contact with the Traffic and Streets Manager or their designee, and the Contractor's employees, agents, and operators performing Contractor Services shall maintain the ability to be in constant communication with the Contractor or Contractor's designated supervisor for the Contractor services.
 - e) Contractor's employees or subcontractors shall possess the proper driver's license to operate assigned equipment.
4. **Task Order Process**
- a) Work performed by the Contractor in preparation and completion of the written task orders is incidental to this contract and is not compensable time under this Agreement. Task Orders issued by County shall set out the maximum amount County shall pay for the services necessary to complete the task based on the agreed upon rates and the schedule for completing the task. Task Orders shall be approved only after Contractor and County agree on the maximum amount payable for completion of the task and the schedule for completion. Task Orders shall be numbered sequentially (TO1, TO2, etc.). A sample Task Order is attached hereto as Exhibit "C."
 - b) Contractor shall not exceed the agreed upon maximum amount payable for completion of the Task Order. Contractor shall not be compensated for work performed in excess of the agreed upon maximum amount contained in a Task Order.

- c) If the Contractor believes exceeding the agreed upon maximum amount payable under the Task Order is warranted, and prior to exceeding the maximum agreement upon amount in the Task Order, the Contractor shall immediately notify the Traffic and Streets Manager or their designee, setting forth in writing the reasons the task cannot be completed within the agreed upon maximum amount payable under the Task Order or on the agreed upon schedule. This written justification shall include supporting information necessary for the Traffic and Streets Manager or their designee to evaluate and decide whether the Task Order should be adjusted as requested by the Contractor. The Traffic and Streets Manager or their designee may request additional information from the Contractor, and the Contractor shall furnish the requested information to the Traffic and Streets Manager or their designee. Contractor's failure to correctly estimate the cost of completing the Task Order shall not be a justification for modifying the Task Order. The Task Order shall be adjusted only upon the written agreement between the County and the Contractor after a written finding is made by the Traffic and Streets Manager or their designee stating the reasons the modification is warranted.
 - d) In no event shall the total of the maximum amount for all approved Task Orders exceed the funding budgeted for On-Call Snow Removal Services and Emergency Equipment Services which amount is SIX HUNDRED THOUSAND DOLLARS (\$600,000.00).
 - e) Modifications to Task Order shall follow the previous nomenclature with letters in alphabetical in order, i.e., TO1A, TO1B.
5. **Activation and Invoicing Process.** County shall notify Contractor when services under an existing Task Order are required. Following the County's Traffic and Streets Manager or designee's verbal authorization to perform services under an existing Task Order, a confirming email shall be sent within twelve (12) hours of said authorization. Upon completion of the authorized services, an invoice shall be submitted to the County Traffic and Streets Manager or their designee issued against the current executed Task Order as provided for in Section C(2). Said invoice shall be itemized to time include a copy of the agreed upon and accepted pricing based on the attached Exhibit "A", Bid Sheet.

SECTION B. TERM: The term of this Agreement shall commence November 30, 2022, and shall continue through November 29, 2029, unless sooner terminated, as provided herein.

SECTION C. COMPENSATION:

Amount of Compensation.

- 1. County shall pay compensation for performance of the Services in accordance with the Rate Schedule set out in Exhibit "A," attached hereto and made a part hereof for all purposes. Compensation for this Agreement and Agreement AGR23-36b and Task Orders under this Agreement shall not exceed a combined total of SIX HUNDRED THOUSAND DOLLARS (\$600,000.00) over the entire Term of this Agreement and which amount does not include applicable New Mexico gross receipts taxes ("NMGR"). There shall be no reimbursable expenses (e.g., printing, travel, lodging, food, entertainment, etc.) allowed under this Agreement.
- 2. **Invoices.** Contractor shall submit itemized invoices to County's Traffic and Streets Manager or designee showing amount of compensation due, amount of any NMGR, and total amount payable. The invoice shall include a copy of the agreed upon and accepted pricing based on the attached Exhibit "A", Bid Sheet. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice. Itemized invoices shall be

submitted monthly unless the Traffic and Street Manager or their designee specifies differently in writing to the Contractor.

SECTION D. TAXES: Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement.

SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and shall not be considered an employee of County for any purpose. Contractor, its agents, or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty, or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely, and reliable manner.

SECTION F. STANDARD OF PERFORMANCE: Contractor agrees and represents that it has and shall maintain the personnel, experience, and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

SECTION G. DELIVERABLES AND USE OF DOCUMENTS: All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables, or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent, or other property right, and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of County.

SECTION H. EMPLOYEES AND SUB-CONTRACTORS: Contractor shall be solely responsible for payment of wages, salary, or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend, and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

SECTION I. INSURANCE: Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services, and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires

Certificates of Insurance, or other evidence acceptable to County, stating that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per occurrence; ONE MILLION DOLLARS (\$1,000,000.00) aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; ONE MILLION DOLLARS (\$1,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.

SECTION J. RECORDS: Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

SECTION K. DUTY TO ABIDE: Contractor shall abide by all applicable federal, state, and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement.

SECTION L. NON-DISCRIMINATION: During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability, or veteran status.

SECTION M. CHOICE OF LAW: The interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

SECTION N. VENUE, FORUM NON-CONVENIENS, EXCLUSIVE STATE JURISDICTION: County and Contractor knowingly, voluntarily, intentionally, and irrevocably agree that any and all legal proceedings related to this Agreement, or to any rights or any relationship between the parties arising therefrom, shall be solely and exclusively initiated, filed, tried, and maintained in the First Judicial Circuit of the State of New Mexico. County and Contractor each expressly and irrevocably waive any right otherwise provided by any applicable law to remove the matter to any other state or federal venue, consents to the jurisdiction of the First Judicial Circuit of the State of New Mexico in any such legal proceeding, waives any objection it may have to the laying of the jurisdiction of any such legal proceeding. County and Contractor also agree that this term is a material inducement for each to enter this Agreement, and that both County and Contractor warrant and represent that each have had the opportunity to review this term with legal counsel.

SECTION O. WAIVER OF JURY TRIAL: In the event of any action or proceeding, (including without limitation, any claim, counterclaim, cross-claim or third party claim) arising out of or, relating to this Agreement, or the transaction contemplated by this Agreement, County and

Contractor KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL, and agree that a court shall determine and adjudicate all issues of law and fact with a jury trial being expressly waived. County and Contractor also agree that this waiver of a jury trial was a material inducement for each to enter this Agreement, and that both County and Contractor warrant and represent that each have had the opportunity to review this jury waiver with legal counsel.

SECTION P. INDEMNITY: Contractor shall indemnify, defend, and hold harmless County, its Council members, employees, agents, and representatives, from and against all liability, claims, demands, actions (legal or equitable), damages, losses, costs, or expenses, including attorney fees, of any kind or nature, to the extent that the liability, claims, demands, actions, damages, losses, costs, and expenses are caused by, or arise out of, the acts or omissions of the Contractor or Contractor's officers, employees, agents representatives, and subcontractors in the performance or breach of the Services under this Agreement.

SECTION Q. FORCE MAJEURE: Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

SECTION R. NON-ASSIGNMENT: Contractor shall not assign this Agreement or any privileges or obligations herein, and shall not novate this Agreement to another without the prior written consent of the County Manager.

SECTION S. LICENSES: Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

SECTION T. PROHIBITED INTERESTS: Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it shall not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept, or agree to accept, a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

SECTION U. TERMINATION:

- 1. Generally.** The County Manager may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor shall render a final report of the Services performed to the date of termination, and shall turn over to County originals of all materials prepared pursuant to this Agreement.
- 2. Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

SECTION V. NOTICE: Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Traffic and Streets Manager
Incorporated County of Los Alamos
101 Camino Entrada, Building 1
Los Alamos, New Mexico 87544

Contractor:

Patrick Herrera, Managing Member/Owner
Allied 360 Construction, LLC
P.O. Box 1913
Española, New Mexico 87532

With a copy to:

County Attorney's Office
1000 Central Avenue, Suite 350
Los Alamos, New Mexico 87544

SECTION W. INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein, and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both authorized representatives of County and Contractor. In the event of any conflict between the terms, conditions, and provisions of this Agreement, and the terms, conditions and provisions of any exhibits or attachments, the terms, conditions and provisions of this Agreement shall control and take precedence.

SECTION X. NO IMPLIED WAIVERS: The failure of County to enforce any provision of this Agreement is not a waiver by County of the provisions, or of the right thereafter, to enforce any provision(s).

SECTION Y. SEVERABILITY: If any provision of this Agreement is held to be unenforceable for any reason: (i) such provision shall be reformed only to the extent necessary to make the intent of the language and purpose of the Agreement enforceable; and (ii) all other provisions of this Agreement shall remain in effect so long as the substantive purpose of the Agreement is possible.

SECTION Z. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes.

SECTION AA. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES: Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

SECTION AB. DUPLICATE ORIGINAL DOCUMENTS: This document may be executed in two (2) counterparts, each of which shall be deemed an original.

SECTION AC. CONFIDENTIAL INFORMATION: Any confidential information of one party that is provided to the other party during the term of this Agreement shall be kept confidential and shall not be made available to any individual or organization in accordance with the Confidential Information Disclosure Statement in Exhibit "B." The Confidential Information Disclosure Statement shall be completed by Contractor as a condition precedent and submitted as part of this Agreement. Its terms shall govern as if fully set forth herein.

SECTION AD. NEGOTIATED TERMS: This Agreement reflects negotiated terms between the parties, and each party has participated in the preparation of this Agreement with the opportunity to be represented by counsel, such that neither party shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

BY: _____
STEVEN LYNNE **DATE**
COUNTY MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

ALLIED 360 CONSTRUCTION, LLC, A NEW MEXICO
LIMITED LIABILITY COMPANY

BY: _____
PATRICK HERRERA **DATE**
MANAGING MEMBER/OWNER

Exhibit "A"
 Compensation Rate Schedule
 AGR23-36a

**Standard work hours are from 5:00 a.m. to 8:00 p.m.
 Normal business days, Monday through Friday**

COST CATEGORY	Year 1 Hourly Rates	Year 2 Hourly Rates	Year 3 Hourly Rates	Year 4 Hourly Rates	Year 5 Hourly Rates	Year 6 Hourly Rates	Year 7 Hourly Rates
Rate for Loader 3 cy minimum capacity and operator	\$124.00	\$127.72	\$131.55	\$135.50	\$139.57	\$143.76	\$148.07
Rate for Backhoe and operator	\$114.00	\$117.42	\$120.94	\$124.57	\$128.31	\$132.16	\$136.12
Rate for Dump Truck Dual-axle 10-12 cy minimum capacity and operator	\$100.00	\$103.00	\$106.09	\$109.27	\$112.55	\$115.93	\$119.41
Rate for Tractor/trailer 18-20 cy minimum capacity Dump and operator	\$113.00	\$116.39	\$119.88	\$123.48	\$127.18	\$131.00	\$134.93
Rate for Pickup Truck and Plow and operator	\$60.00	\$61.80	\$63.65	\$65.56	\$67.53	\$69.56	\$71.65
Rate for D-5 or equivalent Dozer and operator	\$233.00	\$239.99	\$247.19	\$254.61	\$262.25	\$270.12	\$278.22
Rate for Grader with 14' moldboard and operator	\$200.00	\$206.00	\$212.18	\$218.55	\$225.11	\$231.86	\$238.82
Rate for Snow Blower and operator	\$83.00	\$85.49	\$88.05	\$90.69	\$93.41	\$96.21	\$99.10
Rate for Sidewalk Plow (Bombardier or equivalent)	\$83.00	\$85.49	\$88.05	\$90.69	\$93.41	\$96.21	\$99.10
Rate for Laborer (Shoveler)	\$72.07	\$74.23	\$76.46	\$78.75	\$81.11	\$83.54	\$86.05
Other: provide any additional services offered by your organization related to snow removal and emergency equipment related to debris removal	\$114.00	\$117.42	\$120.94	\$124.57	\$128.31	\$132.16	\$136.12

Premium work hours are from 8:00 p.m. to 5:00 a.m.

Monday through Friday, Weekends and Federal Holidays

COST CATEGORY	Year 1 Hourly Rates	Year 2 Hourly Rates	Year 3 Hourly Rates	Year 4 Hourly Rates	Year 5 Hourly Rates	Year 6 Hourly Rates	Year 7 Hourly Rates
Rate for Loader 3 cy minimum capacity and operator	\$148.80	\$153.26	\$157.86	\$162.60	\$167.48	\$172.50	\$177.67
Rate for Backhoe and operator	\$136.80	\$140.90	\$145.13	\$149.49	\$153.97	\$158.59	\$163.35
Rate for Dump Truck Dual-axle 10-12 cy minimum capacity and operator	\$120.00	\$123.60	\$127.31	\$131.13	\$135.06	\$139.11	\$143.29
Rate for Tractor/trailer 18-20 cy minimum capacity Dump and operator	\$135.60	\$139.67	\$143.86	\$148.17	\$152.62	\$157.20	\$161.91
Rate for Pickup Truck and Plow and operator	\$72.00	\$74.16	\$76.38	\$78.68	\$81.04	\$83.47	\$85.97
Rate for D-5 or equivalent Dozer and operator	\$279.60	\$287.99	\$296.63	\$305.53	\$314.69	\$324.13	\$333.86
Rate for Grader with 14' moldboard and operator	\$240.00	\$247.20	\$254.62	\$262.25	\$270.12	\$278.23	\$286.57
Rate for Snow Blower and operator	\$99.60	\$102.59	\$105.67	\$108.84	\$112.10	\$115.46	\$118.93
Rate for Sidewalk Plow (Bombardier or equivalent)	\$99.60	\$102.59	\$105.67	\$108.84	\$112.10	\$115.46	\$118.93
Rate for Laborer (Shoveler)	\$86.48	\$89.08	\$91.75	\$94.50	\$97.34	\$100.26	\$103.27
Other: provide any additional services offered by your organization related to snow removal and emergency equipment related to debris removal	\$136.80	\$140.90	\$145.13	\$149.49	\$153.97	\$158.59	\$163.35

Exhibit "B"
Confidential Information Disclosure Statement
AGR23-36a

The Incorporated County of Los Alamos is a governmental entity subject to certain disclosure laws including, but not limited to, the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1, et seq. Nothing in this Agreement is intended to diminish or expand the application of any applicable disclosure laws to any proprietary or confidential information.

This Confidential Information Disclosure Statement ("Statement") defines obligations and waivers related to Confidential Information disclosed pursuant to the above referenced Agreement between County and Contractor. County and Contractor agree to the following:

1. Statement Coordinator – Each party designates the following person as its Statement Coordinator for coordinating the disclosure or receipt of Confidential Information:

Contractor: Patrick Herrera
Allied 360 Construction, LLC
P.O. Box 1913
Española, New Mexico 87532
Email: patrickherrera@ymail.com

County: Traffic and Streets Division
101 Camino Entrada, Building 1
Los Alamos, New Mexico 87544

2. Definitions:

- a) **Confidential Information** - any form of information, in any format, disclosed by the Discloser to the Recipient and identified in writing as confidential.
- b) **Discloser** - the party disclosing Confidential Information.
- c) **Exception** – An exception is satisfied if the Confidential Information disclosed: (i) was in Recipient's possession prior to receipt from Discloser, (ii) is publicly known or readily ascertainable by legal means, (iii) is lawfully received by Recipient from a third party without a duty of confidentiality, (iv) is disclosed by Discloser to a third party without a duty of confidentiality on the third party, (v) is independently developed or learned by Recipient, or (vi) is disclosed by Recipient with Discloser's prior written approval.
- d) **Recipient** – the party receiving Confidential Information.

3. Obligations – Recipient shall protect and ensure its participating subcontractors, agents, or associates shall protect all Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information as Recipient uses to protect its own information of a like nature. If any person or entity requests or demands, by subpoena or otherwise, all or any portion of the Confidential Information provided by one party to another, the party receiving such request shall immediately notify the Discloser of such request or demand. The party receiving the request or demand shall independently determine whether the information sought is subject to disclosure under applicable law including the New Mexico Inspection of Public Records Act. If the party receiving the request or demand determines that the

information is subject to disclosure, it shall notify the Discloser of its intent to permit the disclosure with sufficient time to permit the Discloser to invoke the jurisdiction of an appropriate court or administrative body to raise any legitimate objections or defenses it may have to the disclosure. In the absence of an appropriate order prohibiting the disclosure, the party receiving the request or demand shall permit and proceed with the disclosure without incurring any duty, obligation or liability to the Discloser.

